

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

ANDREW CORZO, SIA HENRY, ALEXANDER LEO-GUERRA, MICHAEL MAERLENDER, BRANDON PIYEVSKY, BENJAMIN SHUMATE, BRITTANY TATIANA WEAVER, and CAMERON WILLIAMS, individually and on behalf of all others similarly situated,

Case No.: 1:22-cv-00125-MEK

Plaintiffs,

v.

BROWN UNIVERSITY, CALIFORNIA INSTITUTE OF TECHNOLOGY, UNIVERSITY OF CHICAGO, THE TRUSTEES OF COLUMBIA UNIVERSITY IN THE CITY OF NEW YORK, CORNELL UNIVERSITY, TRUSTEES OF DARTMOUTH COLLEGE, DUKE UNIVERSITY, EMORY UNIVERSITY, GEORGETOWN UNIVERSITY, THE JOHNS HOPKINS UNIVERSITY, MASSACHUSETTS INSTITUTE OF TECHNOLOGY, NORTHWESTERN UNIVERSITY, UNIVERSITY OF NOTRE DAME DU LAC, THE TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, WILLIAM MARSH RICE UNIVERSITY, VANDERBILT UNIVERSITY, and YALE UNIVERSITY,

Defendants.

**PLAINTIFFS' MOTION TO MODIFY CASE MANAGEMENT ORDER #1 AND
MEMORANDUM IN SUPPORT**

Plaintiffs respectfully submit this Memorandum of Law in Support of their Motion to Modify Case Management Order #1. ECF 195 (reflected in Appendix A). Plaintiffs respectfully ask the Court to extend the schedule by approximately seventy-five (75) days, to the dates set forth in Appendix B. The dates from Appendix A and Appendix B are compared in Appendix C. This is Plaintiffs' first motion to modify Case Management Order #1 (although, as explained below, the Court previously extended the date for Defendants substantially to complete their document production, after considering the parties' joint request for such an extension with respect to certain Defendants).

LEGAL STANDARDS

A discovery schedule may be modified before the expiration of the existing deadlines “for good cause and with the judge’s consent.” Fed. R. Civ. P. 16(b)(4); *see also* Fed. R. Civ. P. 6(b)(1)(A) (“When an act may or must be done within a specified time, the court may, for good cause, extend the time without or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.”). The “primary consideration” with respect to “good cause” is the diligence of the party seeking the extension. *Alioto v. Town of Lisbon*, 651 F.3d 715, 719 (7th Cir. 2011). Such extensions are appropriate, for example, where “it does not appear that either party was attempting to purposefully delay these proceedings” and there have been no post-deadline “discovery requests to gain a tactical advantage.” *Krukowski v. Omicron Techs., Inc.*, 2012 WL 3841491, at *4 (N.D. Ill. Aug. 29, 2012).

ARGUMENT

Plaintiffs respectfully submit that, under the foregoing standards, the proposed modification of Case Management Order #1, reflected in Appendix B, is warranted and in the

best interests of the proposed class, for numerous reasons, primarily arising out of Plaintiffs' counsel's diligence in discovery to date:

First, since the outset of fact discovery, in September 2022, Plaintiffs have diligently and aggressively pursued discovery in this complex and expansive case. As the Court recognized at the outset of discovery, this is a case with seventeen defendant universities ("Defendants"), each with sophisticated counsel, concerning an alleged conspiracy beginning in 2003 and continuing until 2021, and a proposed class of nearly 200,000 allegedly injured students and former students. Considering the law the Court may apply (where the issue of whether the "*per se*" or "rule of reason" mode of analysis is an intensely factual issue), Plaintiffs have undertaken to collect evidence on each of the elements of their antitrust claim under both the *per se* and rule of reason standards and on Defendants' claimed immunity. Seeking damages and a class under Fed. R. Civ. P. 23(b)(3), Plaintiffs are working in conjunction with consulting and testifying experts to understand the details of the alleged cartel's financial aid methods and principles, how each school imposed such methods and principles, in order to hone the computation of impact and damages within the proposed class. In conjunction with the latter project, Plaintiffs have been pursuing production of large databases of structured data regarding reflecting each Defendant's methods and computations of financial aid and pricing for tens of thousands of students from a period before the alleged conspiracy began and extending through the present. Even in the context of large antitrust class actions, this one stands out for the amount of time and effort required for Plaintiffs to accomplish the tasks necessary to prove their claims.

Second, the proposed extension will most reasonably permit Plaintiffs' counsel to complete their substantial document and data review and numerous relevant depositions, in line with schedules entered in similar cases in this District. Over the last eight (8) months,

Defendants have collectively produced approximately 1.13 million documents, totaling more than 4.8 million pages. In line with a conventional and reasonable approach to fact discovery, Plaintiffs' counsel have sought to review some critical mass of these documents before taking fact depositions, using those depositions to sharpen their further document review, and noticing and taking subsequent fact depositions on the basis of such analyses. In addition, also in line with a conventional and reasonable approach to fact discovery, Plaintiffs' counsel have sought to complete as much document review, and as many fact depositions, as possible before identifying relevant topics for purposes of depositions under Fed. R. Civ. P. 30(b)(6). Plaintiffs' counsel have thus far taken thirty-three (33) fact depositions, have noticed or scheduled to take approximately twenty-five (25) more, and anticipate noticing at least twenty (20) more, including the Rule 30(b)(6) depositions. The result of this approach is that Plaintiffs would ideally finish their document review over the next two (2) months, while continuing to take numerous fact depositions, and thereafter take the remaining fact depositions and Rule 30(b)(6) depositions as appropriate.

The schedule that Plaintiffs propose will result in a period of fact discovery comparable to many complex multi-defendant antitrust litigation in this District. In *In re Turkey Antitrust Litigation*, Civ. A. No. 1-19-cv-8318 (N.D. Ill.), for example, the court set an original period of fact discovery of approximately eighteen (18) months. ECF 200. The court subsequently extended the period of fact discovery by approximately five (5) months, resulting in a fact-discovery period of approximately two years. ECF 571. In *Kleen Products v. Packaging Corp.*, 1:10-cv-05711 (N.D. Ill.), the court allowed a fact discovery period of approximately seventeen (17) months, ECF No. 461, and ultimately extended fact discovery by another five months, giving the parties approximately twenty-two (22) months. ECF No. 513. In *In re: Plasma-*

Derivative Protein Therapies Litigation, 1:09-cv-0766 (N.D. Ill.), the court allowed a fact-discovery period of approximately eighteen (18) months, ECF No. 330, and ultimately extended that by another nine (9) months, giving the parties around twenty-seven (27) months of fact discovery, ECF No. 500. And in *Moehrl v. National Association of Realtors*, 1:19-cv-01610 (N.D. Ill.), the court authorized fact discovery to last nearly two years (663 days). ECF No. 196. The schedule that Plaintiffs now propose, in Appendix B, would result in a period of fact discovery of approximately nineteen (19) months (from September 2022 to April 2024).

Third, the proposed extension follows naturally, and symmetrically, from Defendants' mid-discovery requests for extensions of time by which they would substantially complete their production of data and documents, and the Court's global resolution of such requests. The original date for the substantial completion of document production for requests for production served on September 19, 2022, was March 3, 2023. At Defendants' request, however, Plaintiffs consented to extending this date until May 15, 2023—an extension of seventy-three (73) days. EFC 352.¹ In so agreeing, Plaintiffs accepted several Defendants' explanation that, given the number of documents at issue, they would be unable to meet the original deadline. The result of this extension was that Plaintiffs had 73 fewer days in which to conduct document review and deposition identification.² This prior, 73-day extension thus corresponds to the 75-day extension of the schedule that Plaintiffs now seek. Plaintiffs did not seek any such extension earlier this year (either from the Defendants or the Court), because they were seeking to complete fact

¹ On April 20, 2023, the Court moved the deadline to May 15, 2023, for all Defendants after learning that Plaintiffs had agreed to extensions between April 30, 2023, and May 15, 2023, for certain Defendants and were seeking some "deadline." 4/20/23 Tr. at 8:12-10:7.

² Defendants similarly sought, and obtained, a three-week extension to produce structured data. ECF 315.

discovery within the original deadline. As explained herein, however, Plaintiffs' counsel have now concluded that it would benefit the proposed class to move back the original deadline.

Fourth, the proposed extension sensibly accounts for the noticing and scheduling of depositions to date in this matter. After an initial period of document review, as explained above, Plaintiffs' counsel began noticing fact depositions during the late spring, the summer, and the early fall. In doing so, Plaintiffs' counsel understood—including based on repeated explanations from Defendants' counsel—that the proposed deponents were almost never available for deposition in the near term (that is, within a period of a few weeks). (*See, e.g.*, Normand Decl. Ex. A (summarizing the lengths of time between the date when deposition notices were sent, when the Defendant offered deposition dates in response, and the date for which the deposition was scheduled).) On average, witnesses have been produced over 90 days after being noticed—and this is rarely due to an adjournment request from Plaintiffs. *See id.*³ Plaintiffs' counsel accepted that this was either because (a) Defendants' employees, given academic schedules, were not immediately available during the summer and because the fall is a particularly busy time for colleges and universities such as Defendants, and/or (b) Defendants wanted to spend a significant amount of time in preparing the witness for deposition. Whatever the explanation, Plaintiffs' counsel have been accommodating in agreeing to depositions dates that have been, with very few exceptions, many weeks and even months after the dates the deposition notices were sent. Plaintiffs submit that their proposed extension request accounts for such accommodating scheduling.⁴

³ Plaintiffs' exhibit regarding the scheduling of depositions does not reflect the many instances where Plaintiffs have had to repeatedly reach out to obtain dates for noticed depositions.

⁴ In the October 2023 Joint Status Report, Defendants asserted that Plaintiffs have “inexplicably delay[ed] in beginning to notice depositions” and have requested “repeated postponements of depositions.” ECF 450 at 8-9. Contrary to this narrative, and in summarizing the timing logistics for each deponent noticed

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to date, Exhibit A of the supporting Declaration of Edward Normand largely speaks for itself. In addition, Defendants' narrative omits key facts, such as the revelation in late June 2023 (after the May 2023 deadline for the substantial completion of document production) regarding the existence of the Department of Justice's investigation and the depositions of Defendants taken in connection therewith, which the Court indicated the relevant Defendants should have acknowledged much earlier. 7/24/23 Tr. at 43-49. Such developments necessarily altered strategy and timing regarding several key depositions.

5

[REDACTED]

[REDACTED]

[REDACTED]

Sixth, the proposed extension will reasonably permit Plaintiffs' counsel to continue to obtain the structured data they have repeatedly sought from Defendants, which efforts have included numerous requests for clarifications related to such data, including definitions of variable and field names, and explanations for apparently missing data (which Defendants have since explained is due to its unavailability). The production and clarification process has been pursued informally through emails and meet-and-confers, and it is continuing. In Plaintiffs' counsel's experience, even where (such as here) the defendants cooperate in such efforts, this process is inherently time-consuming in major data-intensive antitrust cases.⁶

Finally, to the extent the Court deems this factor relevant, Plaintiffs submit that the proposed extension will not prejudice Defendants. In fact, it seems likely to ease the burden on them. Plaintiffs could conceivably identify and notice all of the remaining fact deponents and Rule 30(b)(6) topics for completion of depositions by January 31, 2024. (Plaintiffs' counsel, for the many reasons explained above, reasonably seek to avoid such a schedule.) In that event, however, Defendants would need to make their fact deponents available, and to prepare a Rule 30(b)(6) witnesses or witnesses, on a much more compressed time schedule than they have made witnesses available for depositions to date—and would have to do so through the typical vacation times of the second half of December and beginning of January. Plaintiffs' counsel

⁶ Plaintiffs learned through depositions this summer, for example, that Defendants had maintained their formulae for setting financial aid awards in their database software. Although most Defendants have produced these software "settings," Plaintiffs remain engaged in process of obtaining clarifications about various definitions in these settings. Some Defendants have provided, or committed to provide, these clarifications informally. Some Defendants have insisted that these clarifications be obtained formally, which Plaintiffs plan to do through Rule 30(b)(6) depositions.

propose instead to take the same number of depositions but to use a longer period of time in which to do so, and thereby increase scheduling flexibility.

CONCLUSION

Plaintiffs respectfully request, for the foregoing reasons, that the Court modify Case Management Order #1, ECF 195, to the dates set forth in Appendix B.

Dated: November 15, 2023

Respectfully Submitted,

/s/ Robert D. Gilbert

Robert D. Gilbert
Elpidio Villarreal
Robert S. Raymar
David Copeland
Steven Magnusson
Natasha Zaslove
**GILBERT LITIGATORS &
COUNSELORS, P.C.**
11 Broadway, Suite 615
New York, NY 10004
Phone: (646) 448-5269
rgilbert@gilbertlitigators.com
pdvillarreal@gilbertlitigators.com
rraymar@gilbertlitigators.com
dcopeland@gilbertlitigators.com
smagnusson@gilbertlitigators.com
nzaslove@gilbertlitigators.com

/s/ Edward J. Normand

Devin “Vel” Freedman
Edward J. Normand
Peter Bach-y-Rita
Richard Cipolla
**FREEDMAN NORMAND
FRIEDLAND LLP**
99 Park Avenue
Suite 1910
New York, NY 10016
Tel: 646-350-0527
vel@fnf.law
tnormand@fnf.law
pbachyrita@fnf.law
rcipolla@fnf.law

Ivy Ngo
**FREEDMAN NORMAND
FRIEDLAND LLP**
1 SE 3d Avenue
Suite 1240
Miami, FL 33131
Tel: 786-924-2900
ingo@fnf.law

/s/ Eric L. Cramer

Eric L. Cramer
Caitlin G. Coslett
Ellen Noteware
BERGER MONTAGUE PC
1818 Market Street, Suite 3600
Philadelphia, PA 19103

Daniel J. Walker

Robert E. Litan

Hope Brinn

BERGER MONTAGUE PC
2001 Pennsylvania Avenue, NW
Suite 300
Washington, DC 20006

Tel: 215-875-3000
ecramer@bm.net
ccoslett@bm.net
enoteware@bm.net

Tel: 202-559-9745
rlitan@bm.net
dwalker@bm.net
hbrinn@bm.net

Richard Schwartz
BERGER MONTAGUE PC
1720 W Division
Chicago, IL 60622
Tel: 773-257-0255
rschwartz@bm.net

Counsel for Plaintiffs

Appendix A

<u>EVENT</u>	<u>DEADLINE</u>
Motions with Respect to Written Discovery	November 15, 2023
Close of Fact Discovery	January 31, 2024
Opening Expert Reports (Class Certification and Merits) on All Issues on Which a Party Has the Burden of Proof	March 15, 2024
Opposition Expert Reports (Class Certification and Merits)	May 17, 2024
Rebuttal Expert Reports (Class Certification and Merits)	August 2, 2024
Close of Expert Discovery	September 13, 2024 ³
<i>Daubert</i> Motions	October 18, 2024
Motion for Class Certification	October 18, 2024
<i>Daubert</i> Oppositions	November 15, 2024
Opposition to Motion for Class Certification	November 15, 2024
<i>Daubert</i> Replies	December 20, 2024
Reply in Support of Class Certification	January 8, 2025

<i>Daubert</i> and/or Class Certification Hearing	Court's discretion
Summary Judgment Motions	March 7, 2025
Summary Judgment Oppositions	April 11, 2025
Summary Judgment Replies	May 12, 2025
Summary Judgment Hearing	Court's discretion
Pre-Trial Conference	Court's discretion
Trial	Court's discretion

Appendix B

<u>EVENT</u>	<u>DEADLINE</u>
Motions with Respect to Written Discovery	January 26, 2024
Close of Fact Discovery	April 15, 2024
Opening Expert Reports (Class Certification and Merits) on All Issues on Which a Party Has the Burden of Proof	June 3, 2024
Opposition Expert Reports (Class Certification and Merits)	August 5, 2024
Rebuttal Expert Reports (Class Certification and Merits)	October 21, 2024
Close of Expert Discovery	December 2, 2024 ³
<i>Daubert</i> Motions	January 13, 2025
Motion for Class Certification	January 13, 2025
<i>Daubert</i> Oppositions	February 13, 2025
Opposition to Motion for Class Certification	February 13, 2025
<i>Daubert</i> Replies	March 28, 2025
Reply in Support of Class Certification	April 5, 2025

<i>Daubert</i> and/or Class Certification Hearing	Court's discretion
Summary Judgment Motions	June 5, 2025
Summary Judgment Oppositions	July 10, 2025
Summary Judgment Replies	August 11, 2025
Summary Judgment Hearing	Court's discretion
Pre-Trial Conference	Court's discretion
Trial	Court's discretion

Appendix C

<u>EVENT</u>	<u>CURRENT DEADLINE</u>	<u>PROPOSED DEADLINE</u>
Motions with Respect to Written Discovery	November 15, 2023	January 26, 2024
Close of Fact Discovery	January 31, 2024	April 15, 2024
Opening Expert Reports (Class Certification and Merits) on All Issues on Which a Party Has the Burden of Proof	March 15, 2024	June 3, 2024
Opposition Expert Reports (Class Certification and Merits)	May 17, 2024	August 5, 2024
Rebuttal Expert Reports (Class Certification and Merits)	August 2, 2024	October 21, 2024
Close of Expert Discovery	September 13, 2024 ³	December 2, 2024 ³
<i>Daubert</i> Motions	October 18, 2024	January 13, 2025
Motion for Class Certification	October 18, 2024	January 13, 2025
<i>Daubert</i> Oppositions	November 15, 2024	February 13, 2025
Opposition to Motion for Class Certification	November 15, 2024	February 13, 2025
<i>Daubert</i> Replies	December 20, 2024	March 28, 2025

Reply in Support of Class Certification	January 8, 2025	April 5, 2025
<i>Daubert</i> and/or Class Certification Hearing	Court's discretion	Court's discretion
Summary Judgment Motions	March 7, 2025	June 5, 2025
Summary Judgment Oppositions	April 11, 2025	July 10, 2025
Summary Judgment Replies	May 12, 2025	August 11, 2025
Summary Judgment Hearing	Court's discretion	Court's discretion
Pre-Trial Conference	Court's discretion	Court's discretion
Trial	Court's discretion	Court's discretion